

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

WESTERN REFINING SOUTHWEST, INC.,
and WESTERNING REFINING PIPELINE, LLC,

Plaintiffs,

vs.

Civ. No. 14-804 KG/KK

3.7820 ACRES OF LAND IN MCKINLEY COUNTY,
NEW MEXICO, et al.,

Defendants.

ORDER

This matter comes before the Court upon Plaintiffs' Motion to Disregard New Argument or, in the Alternative, for Leave to File Surreply (Plaintiffs' Motion), filed on February 17, 2015. (Doc. 152). No response has been filed. *See* (Doc. 158).

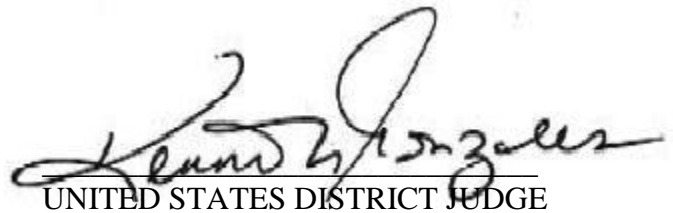
Although the Court stayed this case on January 21, 2015, pending the Court's ruling on two of Plaintiffs' motions,¹ the Court expressly allowed for the completion of briefing on Defendant Sefina Garcia's Motion to Dismiss Plaintiffs' Complaint for Condemnation (Doc. 58) (Motion to Dismiss). (Doc. 145) at 1. Because Plaintiffs' Motion concerns briefing on the Motion to Dismiss, the Court will entertain Plaintiffs' Motion.

In Defendant Garcia's reply to her Motion to Dismiss, Defendant Garcia raises a new argument: that condemnation of allotted lands is improper without consent of the United States. Plaintiffs move to disregard that argument, or in the alternative, to permit them to file a surreply under Fed. R. Civ. P. 7(b) to address that argument. When a party raises a new argument in a

¹ The Court has since granted one of those motions, Plaintiff's Motion for Leave to File Surreply (Doc. 147). *See* (Doc. 156). The other pending motion is Plaintiffs' Motion for an Order Requiring United States to Represent Allottees (Doc. 148).

reply, the Court has the option of either disregarding the new argument or allowing the opposing party to file a surreply. *Doebele v. Sprint/United Management Co.*, 342 F.3d 117, 1139 n. 13 (10th Cir. 2003). In the interests of justice, the Court will permit Plaintiffs to file a surreply.

IT IS ORDERED that the Motion to Disregard New Argument or, in the Alternative, for Leave to File Surreply (Doc. 152) is granted in that on or before May 20, 2015, Plaintiffs may file a surreply to address the issue of whether condemnation of allotted lands is improper without the United States' consent.



UNITED STATES DISTRICT JUDGE